COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

A.O. No. 457 of 2001
(Old No. 112 of 1997)

The New India Insurance Co. Ltd.

Vs.

Smt. Thuma Devi and another

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Date: 8th December 2006 ***Initials of Judge***

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 457 of 2001

Old F.A.F.O. No. 112 of 1997

The New India Insurance Co.Ltd. Uttarkashi through Senior Divisional Manager, New India Insurance Co. Ltd., Civil Lines, Allahabad.

… Appellant.

Versus

1. Smt. Thuma Devi wife of Hukum Singh, resident of village and Post Office Ladoli, Kamaranigasrh, Tehsil Rudra Prayag, District Chamoli, Garhwal. (Claimant),
2. Sri Gyanendra Singh son of Kamal Singh, resident of village Patara, Patti Bhandarshinv, Tehsil Dunda, District Uttar Kashi. (Owner of Truck No. URM 4167).

… Respondents

Sri M.K.Agarwal, learned Counsel for the appellant-Insurance Company.
Sri Sudhir Singh, learned counsel for the owner-respondent.

Date December 08, 2006.

P.C : Hon. B.S. Verma, J.

This appeal under Section 30 of the Workmen's Compensation Act, 1923 is directed against the judgment and award dated 07-1-1997 passed by the learned Workmen's Compensation Commissioner/District Magistrate Uttarkashi (for ***short Commissioner***) in Case No. 2 of 1995, Smt. Thuma Devi Vs. Sri Gyanendra and another, whereby the learned Commissioner awarded compensation of Rs. 1,29,168/- along with 12% interest from 6-9-1994 payable by the Insurance Company-appellant.

Relevant facts of the case are Ramesh Singh, son of claimant Thuma Devi, aged 26 years and earning Rs. 1200/- per month lost his life in the course of his employment, who was employed as driver in Truck No. URM-4167 under the employment of Gyanendra Singh the owner of the truck. On 31.12.1993, Ramesh Singh met with the fatal accident on Uttarkashi Barkote motor road near Orachha Bend. The report of the accident was lodged at police station Barkote on 1.1.1994 and the post mortem of the dead body of the deceased was conducted in District Hospital Uttarkashi. The claimant has claimed

compensation of Rs. 86,112/- under the Act along with interest and penalty.

The opposite parties owner and insurer both contested the case. The owner filed his written statement, admitted the accidental death of the deceased in the course of his employment and asserted that the driver was being paid Rs. 800/- per month. It was also stated that the vehicle was duly insured with the Insurance Company, therefore, the liability to pay compensation lay upon the insurer. The owner is also not liable for delay in payment of compensation. The Insurance Company denied the allegations made in the claim petition for want of knowledge. It was asserted that the driver of the vehicle (deceased) was not having a valid driving licence on the date of accident.

On the pleadings of the parties, the learned Commissioner framed following issues:-

1. Whether the applicant is dependent of the deceased workman? If so, its effect?

2. Whether the deceased workman was getting salary @ 1,200/- per month as alleged in the petition or he was paid salary @ 800/- as alleged by the opposite party nos. 1 and 2? Its effect?

3. Whether the deceased was having a valid driving licence to drive the truck in question? It not, its effect?

4. To what relief if any is the claimant entitled?

The claimant in support of its contention filed affidavit, death certificate of the deceased, age certificate, extract of family register etc. She has examined herself in the witness box as P.W.1 O.P. No.1 filed newspaper and an application dated 30-3-1995. The owner has also examined himself as D.W.1. The learned Commissioner heard both the parties and after perusing the evidence, it came to the conclusion that the claimant is the mother and dependent of the deceased workman. It was also held that the workman was getting Rs. 1200/- per month. On the issue of driving licence, the opposite party no.1-owner has examined himself as D.W.1 and has stated that he

employed deceased Ramesh as driver under his employment and at that time, he verified the driving licence having been possessed by the workman, which was valid for driving heavy motor vehicles. It was held that the driver was having a valid driving licence on the date of accident. The learned Commissioner found that the truck in question was duly insured with the appellant-Insurance Company. As per provisions of the Workmen's Compensation Act, the compensation was assessed at Rs. 1,29,168/- and interest @ 12% per annum was awarded from 1.2.1994, as mentioned in the impugned award.

The impugned award has been assailed mainly on the ground that the driver-deceased workman was not having a valid driving licence, therefore, there was violation of policy condition and therefore, the insurer is not liable for compensation. The quantum of compensation has been question on the ground that the claimant has claimed Rs. 86,112/- while the Commissioner has awarded compensation more than what has been prayed for. The salary of the deceased has also been challenged in this appeal.

At the outset, it may be mentioned that the appeal under Section 30 of the Act is maintainable only when any substantial question of law is involved in the appeal. In this premise, it has to be determined whether the driver-workman was having a valid driving licence or not.

Before the learned Commissioner Gyanendra Singh, owner of the truck has appeared in the witness box as D.W.1. He has stated that deceased Ramesh was his driver in the truck. He was having a valid driving licence for driving heavy motor vehicles. He has further stated that deceased Ramesh Singh used to keep the driving licence with him. He has informed the insurance company regarding accident. The insurance company asked to file driving licence. The driving licence could not be recovered from the place of accident. He published general notice in the newspaper regarding missing of driving licence. He was cross-examined. He categorically denied the suggestion that deceased was not having a valid driving licence. P.W.2 Matwar Singh who

is real elder brother of the deceased has also deposed on oath that his brother Ramesh Singh did possess a driving licence to drive heavy vehicles.

The Apex Court in the case of ***"Punam Devi and another Vs. Divisional Manager, New India Assurance Co. Ltd. and others" [(2004) 3 Supreme Court Cases, 386],*** observed that ***"Motor Accident- Insurance company neither pleading nor leading evidence that the offending driver had no licence- Claims Tribunal awarding compensation- Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is under S. 149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicles- Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal."***

Moreover, the Apex Court has held in paragraph 110(iii) of the judgment in the case of ***National Insurance Co. Ltd. Vs. Swaran Singh*** reported in [(2004) 3 Supreme Court Cases, 297], as under:-

> ***"The breach of policy condition, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time."***

In view of the evidence available on record on the point of validity of driving licence and in the light of the law laid down by the Apex Court in the cases referred to above, I hold that the appellant miserably failed to discharge its burden on this count. I also find that the testimony of the owner of the vehicle, D.W.1, Gyanendra Singh, to effect that when he employed the workman deceased, he examined the validity of the driving licence possessed by the driver-workman cannot be ignored. Even the P.W.2 Matwar Singh, who is elder brother of the deceased, has given categorical statement on oath that his brother Ramesh was possessing licence to drive heavy vehicles and he had seen his driving licence when he used to come home. PW 2 has not even been cross-examined from the side of the appellant. Moreover, after the accident had taken place, he published a general notice in the newspaper that the driving licence of the deceased was not traced out. It is not disputed that the truck fell into a ravine hundreds of feet down the road due to the accident. It was for the insurance company to have led reliable evidence to show that no driving licence existed in the name of the deceased. The owner made best efforts to trace out the driving licence of the deceased by making publication in the newspaper. The claimant is admittedly an illiterate lady. Her son had lost his life at the age of only 26 years. Naturally, she could not have been in a position to get a duplicate copy of the driving licence obtained, especially when it was not known to the owner of the vehicle as to from which Transport Office the original licence was obtained. P.W.1 Smt. Thuma Devi, the mother of the deceased, has stated on oath that her son Ramesh Singh was doing the work driver for In the given facts and circumstances of the case in the light of the law laid down by the Apex Court, it cannot be held that the deceased workman was not having a valid driving licence. The finding recorded by the learned Commissioner to the effect that the deceased workman was having a valid driving licence does not require any interference.

Learned counsel for the appellant vehemently argued that the learned Commissioner was not justified in awarding the compensation more than what has been prayed for by the claimant. This

submission of the learned counsel is not at all tenable. Under the provisions of the Act, the compensation has to be awarded under the statutory frame taking into considering the age of the deceased and its relevant factor. Under the Workmen's Compensation Act, statute has framed a particular criterion for computing the amount of compensation, therefore, it is not open to the appellant to raise this plea.

The contention of the appellant that the learned Commissioner has erred in holding that the wages of the deceased workman were Rs. 1200/- has no merit particularly in view of the admissions made by the owner that besides Rs.800/- per month, he ued to give Rs. 40/- per day as diet allowance. Moreover, from the side of the appellant no such evidence was led that the salary of the deceased was less than Rs. 1200/- per month. On this count also, there is no illegality in the impugned award.

The learned Commissioner has awarded the interest in accordance with the provisions of the said Act.

In view of the discussion aforesaid, the appeal filed by the Insurance Company is devoid of merit and must fail.

The appeal is dismissed. The judgment and award under appeal is upheld. No order as to costs.

The amount in deposit, if any, in compliance of the interim order dated 10-3-1997 passed by the Allahabad High Court shall be released in favour of the claimant forthwith.

(B.S. Verma, J.)

RCP